

(b) In the exercise of probate authority, an administrative law judge or Indian probate judge will determine—

(1) The entitlement of a tribe to purchase a decedent's interests in trust or restricted land under the statutes;

(2) The entitlement of a surviving spouse to reserve a life estate in one-half of the surviving spouse's interests that have been purchased by a tribe; and

(3) The fair market value of such interests, including the value of any life estate reserved by a surviving spouse.

(c) In making a determination under paragraph (b)(1) of this section, the following issues will be determined by the official tribal roll, which is binding upon the administrative law judge or Indian probate judge:

(1) Enrollment or refusal of the tribe to enroll a specific individual; and

(2) Specification of blood quantum, where pertinent.

(d) For good cause shown, the administrative law judge or Indian probate judge may stay the probate proceeding to permit an aggrieved party to pursue an enrollment application, grievance, or appeal through the established procedures applicable to the tribe.

#### § 4.301 Valuation report.

(a) In all probates, at the earliest possible stage of the proceeding before issuance of a probate decision, BIA must furnish a valuation of the decedent's interests when the record reveals to the Superintendent:

(1) That the decedent owned interests in land located on one or more of the reservations designated in § 4.300; and

(2) That one or more of the probable heirs or beneficiaries who may receive the interests either:

(i) Is not enrolled in the tribe of the reservation where the land is located; or

(ii) Does not have the required blood quantum in the tribe to hold the interests against a claim made by the tribe.

(b) If there is a surviving spouse whose interests may be subject to the tribal option, the valuation must include the value of a life estate based on the life of the surviving spouse in one-half of such interests. The valuation must be made on the basis of the fair market value of the property, includ-

ing fixed improvements, as of the date of decedent's death.

(c) BIA must include the valuation report in the probate package submitted to OHA. Interested parties may examine and copy, at their expense, the valuation report at the office of the Superintendent or the administrative law judge or Indian probate judge.

#### § 4.302 Conclusion of probate and tribal exercise of statutory option.

(a) *Conclusion of probate; findings in the probate decision.* (1) When a decedent is shown to have owned land interests in any one or more of the reservations designated in § 4.300, the probate proceeding relative to the determination of heirs, approval or disapproval of a will, and the claims of creditors will first be concluded as final for the Department in accordance with §§ 4.216 through 4.282 and §§ 4.310 through 4.323. This decision is referred to in this section as the "probate decision."

(2) At the formal probate hearing, a finding must be made on the record showing those interests in land, if any, that are subject to the tribal option.

(i) The finding must be included in the probate decision setting forth the apparent rights of the tribe as against affected heirs or beneficiaries and the right of a surviving spouse whose interests are subject to the tribal option to reserve a life estate in one-half of such interests.

(ii) If the finding is that there are no interests subject to the tribal option, the decision must so state.

(iii) A copy of the probate decision, to which must be attached a copy of the valuation report, must be distributed to all interested parties in accordance with § 4.240.

(b) *Tribal exercise of statutory option.*

(1) A tribe may purchase all or a part of the available interests specified in the probate decision within 60 days of the probate decision unless a petition for rehearing or a demand for hearing has been filed under §§ 4.304 or 4.305.

(2) If a petition for rehearing or a demand for hearing has been filed, a tribe may purchase all or a part of the available interests specified in the probate decision within 20 days from the date of the decision on rehearing or hearing, whichever is applicable. A tribe may

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not, however, claim an interest less than the decedent's total interest in any one individual tract.

(3) The tribe must file a written notice of purchase with the Superintendent, together with the tribe's certification that copies have been mailed on the same date to the administrative law judge or Indian probate judge and to the affected heirs or beneficiaries. Upon failure to timely file a notice of purchase, the right to distribution of all unclaimed interests will accrue to the heirs or beneficiaries.

#### § 4.303 Notice by surviving spouse to reserve a life estate.

When the heir or beneficiary whose interests are subject to the tribal option is a surviving spouse, the spouse may reserve a life estate in one-half of such interests. The spouse must file a written notice to reserve with the Superintendent within 30 days after the tribe has exercised its option to purchase the interest in question, together with a certification that copies thereof have been mailed on the same date to the administrative law judge or Indian probate judge and the tribe. Failure to timely file a notice to reserve a life estate will constitute a waiver thereof.

#### § 4.304 Rehearing.

Any interested party aggrieved by the probate decision may, within 60 days from the date of the probate decision, file with the administrative law judge or Indian probate judge a written petition for rehearing in accordance with § 4.241.

#### § 4.305 Hearing on tribal option to purchase interests.

(a) *Demand for hearing.* Any interested party aggrieved by the exercise of the tribal option to purchase the interests in question or the valuation of the interests as set forth in the valuation report may file with the administrative law judge or Indian probate judge a written demand for hearing. The demand must:

(1) Be filed within 60 days from the date of the probate decision or 60 days from the date of the decision on rehearing, or within 20 days from the date the tribe exercises its option to purchase

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available interests, whichever is applicable;

(2) Include a certification that copies of the demand have been mailed on the same date to the Superintendent and to each interested party; and

(3) State specifically and concisely the grounds upon which it is based.

(b) *Notice of hearing.* The administrative law judge or Indian probate judge must, upon receiving a demand for hearing:

(1) Set a time and place for the hearing after expiration of the 60-day period fixed for the filing of the demand for hearing as provided in § 4.305(a); and

(2) Mail a notice of the hearing to all interested parties not less than 30 days in advance.

(c) *Burden of proof at the hearing.* At the hearing, each party challenging the tribe's claim to purchase the interests in question or the valuation of the interests as set forth in the valuation report will have the burden of proving his or her position.

(d) *Decision after hearing; appeal.* (1) Upon conclusion of the hearing, the administrative law judge or Indian probate judge will issue a decision that determines all of the issues including, but not limited to:

(i) The fair market value of the interests purchased by the tribe; and

(ii) Any adjustment of the fair market value made necessary by the surviving spouse's decision to reserve a life estate in one-half of the interests.

(2) The decision must specify the right of appeal to the Board of Indian Appeals within 60 days from the date of the decision in accordance with §§ 4.310 through 4.323.

(3) The administrative law judge or Indian probate judge must lodge the complete record relating to the demand for hearing with the LTRO as provided in § 4.236(b), furnish a duplicate record thereof to the Superintendent, and mail a notice of such action together with a copy of the decision to each interested party.

#### § 4.306 Time for payment.

A tribe must pay the full fair market value of the interests purchased, as set forth in the valuation report or as determined after hearing in accordance with § 4.305, whichever is applicable.